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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 98

98

ANDREW UPSHAW,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

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**BRIEF FOR PETITIONER**

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**Opinion Below**

The opinion in the United States Court of Appeals was announced on April 19, 1948 affirming the petitioner's conviction of grand larceny in the United States District Court for the District of Columbia has not yet been reported.

**Jurisdiction**

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this court on May 7, 1934.

### Questions Presented

1. Whether under doctrine the rule of *McNabb v. United States*, 318 U. S. 332, a confession is admissible in evidence where it is obtained during an extended illegal detention prior to arraignment.

2. Whether under the doctrine of *McNabb v. United States* a confession obtained during an illegal detention prior to arraignment is admissible in evidence especially when the arresting officer admits that the petitioner was illegally detained and not seasonably taken for arraignment because the officer did not feel that there was sufficient evidence to make out a case against the petitioner.

### Statement of the Case

The petitioner, hereinafter called the defendant, was charged that on May 1, 1947, he took and carried away a watch of the value of one hundred and thirty-five dollars (\$135.00), belonging to one Harriet Pearce, which was never recovered. Mrs. Pearce testified that the defendant, with another man, was sent to her home on May 1, 1947, by a window cleaning company to do some house cleaning; that she took her watch off of the dresser and put it into the dresser drawer; that four other men of the same company worked for her on May 2nd and May 3rd and that all had access to the room from which the watch was allegedly stolen. She first missed her watch about 7:00 P. M. on May 3rd, 1947. Mrs. Pearce did not make a report to police of the alleged theft until about two weeks later.

Mrs. Pearce started to testify relative to an alleged confession at her home by the defendant about 9 P. M., on June 7th, 1947. Upon objection by the defense counsel; the jury was excluded by the Court. Mrs. Pearce testified

in the absence of the jury relative to the alleged confession of the defendant as to taking her watch.

The defense counsel objected to such evidence on the ground that the defendant had been detained an unreasonable time after arrest before the alleged confession was made.

#### TESTIMONY OF FURR AND CULPEPPER

Detectives Furr and Culpepper also testified in the absence of the jury relative to the alleged confession of the defendant. The detectives testified they arrested the defendant about 2:00 P. M., on June 6th, 1947, at his home, 1533 Eighth Street, Northwest. He was taken to the Tenth Precinct and booked for investigation. Both officers testified that the defendant denied stealing the watch when questioned at the Tenth Precinct, after his arrest (R. 19).

Detective Culpepper testified that he next questioned the defendant on the same morning about 11:00 o'clock (R. 20). He questioned the defendant about 5:00 P. M., on the same day. On each occasion the defendant denied the theft.

Detective Culpepper again questioned the defendant about 2:00 P. M., June 7th, 1947, and the defendant is alleged to have signed a voluntary confession.

When questioned under cross-examination as to why the defendant had not been taken before a committing magistrate, neither on Friday, June 6th, nor on Saturday, June 7th, Culpepper stated:

" . . . because I didn't feel that we had a sufficient case against him to have the police court hold him, and if the police court did not hold him, we would lose custody of him, and I no longer would be able to question him," (R. 27)

Furr testified that the next time he questioned the defendant after his arrest on June 6th, 1947, was about 9:30

A. M., the same day, and again about 7:30 or 8:00 P. M., and the defendant continued to deny the theft (R. 31).

Furr testified that the defendant signed a voluntary confession on June 7th, about 9:30 A. M. (R. 31). Culpepper admitted taking the defendant to the home of the complaining witness about 9:00 A. M., on June 7th. During the trip, a heavy storm overtook them and they had to park their car until it abated.

Culpepper, in response to the defense counsel's questioning: "Isn't it a fact that you told the defendant you were going to take him out and tie him to the car and drag him to his death, asked the Court if he had to answer that. When the Court ruled he did, the answer was "No." (R. 28)

As to whether or not the confession was voluntary, the Court ruled that was a factual issue.

The defense counsel informed the Court that he took the position that the confession was not admissible, inasmuch as the defendant's legal rights were involved, in that the police officers held him an unreasonable time in order to get the alleged confession; that he was arrested at 2:00 A. M., Friday, June 6th, without a warrant. They didn't bring him into court on that date, they wanted to question him, and although he denied the theft they continued to question him. Defense counsel also informed the Court that they had an opportunity to bring the defendant before a police magistrate or the U. S. Commissioner, on June 7th, 1947 but they did not.

They waited and took him to the home of the complaining witness on Saturday night, June 7th, about 9:00 o'clock, at which time he is alleged to have made a confession.

Culpepper also testified that the defendant had not been beaten to get the confession, but taken to the home of the complaining witness (R. 33).

It was pointed out by the defense counsel that in the *McNabb*, *Mitchell* and *Akowsky* cases that the confession was not admissible. The Court ruled that the confession was admissible.

Thereafter, Mrs. Pearce returned to the stand and in the presence of the jury related that the defendant came to her house about 9:00 P. M., on June 7th, and admitted stealing her watch. The prosecution then read the alleged confession to the jury (R. 53).

Culpepper testified before the jury that he took the defendant to the home of the complainant, Mrs. Pearce, about 9:00 P. M., June 7th, and his confession to Mrs. Pearce in the presence of Captain Pearce (Metropolitan Police) that he stole her watch. Furr testified to the jury that the defendant signed a written confession about 9:00 A. M., June 7th, admitting the theft of the watch.

#### DEFENDANT'S TESTIMONY

The defendant testified that they had threatened to kill him on June 6th, about 11:00 A. M., unless he confessed to stealing the watch in question; that Furr started banging him on the head and in the stomach shortly after he was taken to the precinct (R. 82).

The defendant testified that he told Furr about 3:30 P. M., that he took the watch in order to get them to stop beating him. The defendant testified that he did not know whether he signed the alleged confession offered in evidence or not, but he did sign a paper without reading it (R. 84).

The defendant testified that Culpepper did not tell him where he was taking him when they left on Saturday night for the home of Mrs. Pearce, but said he was going some place, the descriptive language the defendant did not wish

to use (R. 87). While they were enroute to the home of Mrs. Pearce a storm came up and they had to park the car.

The defendant testified that at that time Culpepper said to him:

"You're going to know something about this watch between now and morning. I want you to tell Captain Pearce's wife the same thing you have said on the statement or else" (R. 88).

The defendant testified that he confessed to Mrs. Pearce of taking the watch, but not of his own free will (R. 89). The defendant testified that he made a report to the jail physician at his earliest convenience, which was July 11th, 1947, that he had been beaten by police officers (R. 91). The physician's report showed that the defendant did make a report of having been beaten by police officers (R. 115).

Mrs. Pearce, called by the defense counsel, testified that five men had worked in her house and that Culpepper told her that the defendant was the only one who had a record. Culpepper and Furr, called in rebuttal, testified that nothing unusual had happened between the time they arrested the defendant and when he allegedly confessed to the crime. Defense counsel inquired of the officers if they had mistreated or beaten the defendant, and if they had, would they admit it in court. Their answer was they would admit it if true but that they did not beat him.

The defense moved for a judgment of acquittal when the Government rested its case and again when it completed the rebuttal. The defense counsel also argued a motion for a new trial which was denied.

Attorney for defendant noted and perfected an appeal to the United States Court of Appeals for the District of Columbia. After defendant's (appellant's) brief was filed, a confession of error and motion to remand was filed by the United States District Attorney for the District of Colum-

big. The Appellate Court confirmed the judgment of the District Court in a 2 to 1 decision.

### **Specifications of Errors to Be Urged**

1. That the Honorable Court below erred in holding a confession admissible in evidence where the confession was obtained during an extended illegal detention prior to arraignment.
2. That the Honorable Court below erred in holding a confession admissible in evidence where the confession was obtained during an illegal detention and upon the admission of the arresting officer that the delay in arraigning the petitioner was because the officer did not feel he had sufficient evidence to make a case against the petitioner.
3. This Honorable Court should expressly over-rule its holding in *Mitchell v. U. S.*, 322 U. S. 65, declaring that illegal detention alone does not vitiate a confession.

### **Argument**

#### **POINTS I AND II**

The Honorable Trial Court below erred in holding a confession admissible in evidence where the confession was obtained during an extended illegal detention especially when the arresting officer admits that the delay in arraigning the petitioner was because the officer did not feel he had sufficient evidence to make a case against the petitioner.

The law clearly requires, as provided in Rule 5(a), Rules of Criminal Procedure for the District Courts of the United States, "An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person *without unnecessary delay* before the nearest available commissioner or before any other nearby officer empowered to commit per-

sons charged with offenses against the law of the United States". In this case it is undisputed that the petitioner was detained for some thirty hours (30) before the alleged confession. In addition, the police officer honestly admitted that the petitioner was not seasonably arraigned, "Because, I didn't feel that we had a sufficient case against him to have a Police Court hold him, and if the Police Court did not hold him we would lose the custody of him and I no longer would be able to question him." There could be no more a flagrant violation or abuse of a person's civil rights in a free and democratic society than this and such a procedure is clearly contrary to both the letter and spirit of the law. In this connection this Court in *Chambers v. Florida*, 309 U. S. 227, said in part, "under our constitutional system courts stand any winds that blow as havens or refuge for those who might otherwise suffer because they are helpless, weak, outnumbered or because they are non-conforming victims of prejudice and public excitement . . . . No higher duty, no more solemn responsibility, rests upon this Court than that of the translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed, or persuasion".

It is potently clear that the detention of the petitioner was plainly unnecessary, unreasonable and illegal from its inception and that it deprived the petitioner of his liberty without due process of law. It further appears that the alleged confession came only as a result of the illegal detention and because of it. The illegal detention together with excessive interrogation is sufficiently aggravating circumstance within itself to violate the established concepts of democratic procedure so as to exclude from evidence a confession so obtained. In *McNabb v. U. S.*, this Court said in part, "Judicial supervision of the administration of criminal justice in the federal courts implies a duty of

establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by observance of those minimal historic safeguards . . . Which are summarized as 'due process of law' and below which we reach what is really trial by force. . . . Quite apart from the constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. . . . Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that command themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime."

It is submitted that the doctrine thusly established expressly condemns the admissibility of any confession obtained during an illegal detention after extended interrogation especially where the accused is admittedly held for questioning to secure evidence sufficient to make out a case. Certainly the delay was not simply a delay but an unreasonable, unnecessary, illegal delay contrary to the letter and spirit of the established law.

It appears abundantly clear that the disclosure or confession made in this case came as a direct result of the illegal detention in fact during the interrogation of the petitioner and as heretofore admitted the detention was solely for the purpose of extracting evidence from the accused. It follows that the evidence so extracted during such illegal

detention is void and of no effect and that detention plus the interrogation is the very kind of circumstance within the legal contemplation by this Court in the McNabb rule and the instant case is distinguishable from the situation in *Mitchell v. United States*, 322 U. S. 65.

It is submitted that the Honorable Court below erred in its holding here even if the now so-called "aggravating circumstances" be found for it is the view by the petitioner that this Honorable Court clearly intended to establish a policy condemning the use of any confession obtained during a period of illegal detention. More especially is this true when the illegal detention is solely for the purpose of interrogation for the purpose of extracting evidence from the accused, and the confession came as a result of the illegal detention and interrogation. Accordingly the doctrine of the *McNabb* and *Mitchell* cases becomes meaningless if the court unwittingly aids the violation of civilized standards of procedure and evidence. The declared purpose of the McNabb doctrine was "the duty of establishing and maintaining civilized standards of procedure and evidence."

And as this Court said in the *McNabb* case, "Plainly a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in the wilful disobedience of the law."

### POINT III

The case of *United States v. Mitchell* 322 U. S. 65, 67 was erroneously decided and should be over-ruled.

In that case the court was concerned with the question as to whether illegal detention alone invalidated a confession when the detention did not produce the alleged disclosure. As the instant case has already been distinguished on its facts, this discussion is directly to the correctness of the

ruling of the question so raised. It would appear that the court fell into error in failing to see the causal connection between the illegal detention and the confession. For it seems to be axiomatic that the psychological pressure imposed upon the accused by illegal detention and interrogation, the apparent purpose of the illegal detention, would inevitably lead to the confession. And this is especially clear in the instant case.

Rules of law ought not to be changed lightly, but sound rules of judicial administration require that when the reason for the rule is erroneous, or is manifestly unsound, or more harm will result than good from following the rule, it is more important for the court to be correct than consistent. Especially is this true, where as here, fundamental rights of American citizens are involved. (Black, *Law of Judicial Precedents*, Chapter 3, Section 66-68, Page 203).

In *Smith v. Allwright*, 321 U. S. 649 where the court expressly overruled *Grovey v. Townsend* 295 U. S. 45, the court said, "... in reaching the decision we have not been unmindful of the desirability of continuity of decisions on a constitutional question. However, when convinced of former error this court has never felt constrained to follow precedent".

In the following cases the court brought changes in the law by the over-ruling of precedent: *United States v. Darby*, 312 U. S. 100 (1940) over-ruling *Hammer v. Dagenhart* 247 U. S. 251 (1917). *California v. Thompson*, 313 U. S. 109 (1940) over-ruling *DiSanto v. Pennsylvania*, 273 U. S. 34 (1926).

*West Coast Hotel v. Parrish*, 300 U. S. 370 (1936) over-ruling *Adkins v. Children's Hospital*, 261 U. S. 525 (1922) *Helvering v. Mountain Produce Corp.* 303 U. S. 376 (1937) over-ruling *Gillespie v. Oklahoma* 257 U. S. 501 (1921).

Psychological pressure, if not physical pressure, should be presumed from an illegal detention and the circumstances

surrounding it, as there would appear no other purpose than the extraction of the disclosure which follows: It is wholly unrealistic to establish a civilized standard of procedure and evidence and then permit it to become distorted by an ingenious or ingenuous evasion of it by legalistic chicanery of those who are to be bound thereby the end result is a high sounding legal theory which is meaningless in practice.

This, it is submitted, was not the intention of the legislature in establishment of this protection for the individual nor the intention of the court in translating this policy in the reality.

### Conclusion

We say, therefore, in view of what has been stated, that the questions presented here are of vital importance, and the judgment of the lower court should be reversed.

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